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Supreme Court of the United States

OCTOBER TERM, 1963

No. 97

LEROY HENRY, ET AL., PETITIONERS,

versus

CITY OF ROCK HILL, RESPONDENT

BRIEF IN OPPOSITION

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Supreme Court of the United States

OCTOBER TERM, 1962

No. 954

LEROY HENRY, ET AL., PETITIONERS,

versus

CITY OF ROCK HILL, RESPONDENT

BRIEF IN OPPOSITION

QUESTION PRESENTED

Whether there was sufficient evidence before the trial court to sustain conviction of petitioners of the common law crime of breach of the peace, even though the acts out of which the charges arose were done in the course of the exercise of petitioners' constitutional right to assemble and petition for redress of grievances?

STATEMENT

Petitioners, all Negros and college students, were arrested on March 15, 1960 and charged with the common law offense of breach of the peace. They had assembled in front of the City Hall in Rock Hill, South Carolina to allegedly protest against racial segregation. Their protest took the form of singing. The warrants of arrest charged that they sang in a loud, boisterous, and tumultuous manner. Their

subsequent convictions were affirmed by the Court of General Sessions for York County, and by the Supreme Court of South Carolina in an opinion reported at 128 S. E. (2d) 775.

ARGUMENT

Ther is no conflict in the decision of the Supreme Court of South Carolina with any principle enunciated by this Court. The evidence presented against petitioners supports their convictions. It was established that there was great tension in the community resulting from previous demonstrations, and that there had been threats to bomb public places (R. 24, 25, 41, 43, 44). The singing of petitioners was loud and boisterous and continued for 25 or 30 minutes before they were arrested. The work of the employees in city hall was completely disrupted (R. 119).

It was stipulated by petitioners (R. 192) that they had not sought any advance appointment with any city official, nor did they at the time of their assemblage ask for an appointment or make any statement of their purpose in demonstrating. They also admit that they were asked to cease their singing and to disband before they were arrested.

A group of white persons had gathered as onlookers in such numbers that they overflowed into the streets (R. 42). The sidewalks were so congested that pedestrians could not pass (R. 90). Traffic was at a standstill as brought out by petitioners' attorneys (R. 126).

It is manifest here that a clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety existed. In *Cantwell v. Connecticut,* 310 U. S. 296, this court held that the power to prevent or punish such conduct was obvious. In *Feiner v. New York,* 340 U. S. 315, a conviction for breach of the peace was upheld in a situation comparable to that presented here.

Petitioners' right to peacably assemble under a right guaranteed by the conviction of the United States is not challenged. Their assembly under the circumstances of this case simply was not peaceful.

The authorities not only have the right, but the duty also, of protecting the public peace. They acted here in good faith to do so. There is no evidence of oppression or force. The police need not wait until the riot has occurred.

CONCLUSION

It is respectfully submitted that the Petition for Writ of *Certiorari* should be denied.

Respectfully submitted,

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